



**BILLING CODE 3510–33–P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 744**

**[Docket No. 140331295-4324-01]**

**RIN 0694–AG14**

**Addition of Person to the Entity List**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) by adding one person under two entries to the Entity List. The person who is added to the Entity List has been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. This person will be listed on the Entity List under the destination of Crimea (Occupied) with a cross reference added under Ukraine.

**DATES:** *Effective Date:* This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:**

Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Fax: (202) 482-3911, E-mail: ERC@bis.doc.gov.

**SUPPLEMENTARY INFORMATION:****Background**

The Entity List (Supplement No. 4 to Part 744) notifies the public about entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests, including terrorism and export control violations involving abuse of human rights. Certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require licenses from BIS and are usually subject to a policy of denial. The availability of license exceptions in such transactions is very limited. The license review policy for each entity is identified in the license review policy column on the Entity List and the availability of license exceptions is noted in the Federal Register notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous

vote. The Departments represented on the ERC approved these changes to the Entity List.

## **ERC Entity List Decisions**

### *Addition to the Entity List*

This rule implements the decision of the ERC to add one person under two entries to the Entity List on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The two entries added to the Entity List consist of one entry in Crimea (Occupied) with an additional entry added to provide a cross reference from Ukraine. The ERC's decision to add 'Crimea (Occupied)' to the Country column of the Entity List results from the U.S. government's decision to use 'Crimea (Occupied)' to describe the purported annexation of Crimea by the Russian Federation.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add this one person under two entities to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List.

The one person under two entries being added to the entity list is a regional oil and gas company in Crimea, Chernomorneftegaz, a.k.a. Chornomornaftogaz and NJSC Chornomornaftogaz, which is a subsidiary of Naftogaz. Chernomorneftegaz, a.k.a. Chornomornaftogaz and NJSC Chornomornaftogaz, has been determined by the ERC to be involved in activities that are contrary to the national security or foreign policy

interests of the United States. The U.S. Government has determined that the Russian Federation's actions – including the recent deployment of Russian Federation military forces in the Crimea area of Ukraine (Occupied Crimea) - are in clear violation of Ukrainian sovereignty and territorial integrity and a breach of international law, including Russia's obligations under the United Nations Charter and under its 1997 military basing agreement with Ukraine. They are also inconsistent with the 1994 Budapest Memorandum, under which, in response to certain commitments by Ukraine, Russia, the United States and the United Kingdom, the signatories consecrated the sovereignty and territorial integrity of Ukraine as an independent state by applying the principles of territorial integrity and nonintervention found in Helsinki Final Act, the accords signed by the Conference on Security and Cooperation in Europe of 1975. The Russian Federation's actions also conflict with the Vienna Document of 1979, as adopted by the members of the Organization for Security and Cooperation in Europe (of which the Russian Federation is a member), which includes a provision for exchange and verification of military information among membership, including but not limited to prior notification of military activities such as major troop exercises.

On March 6, 2014, the President of the United States issued Executive Order 13660 (79 FR 13491), *Blocking Property of Certain Persons Contributing to the Situation in Ukraine*, finding that the actions and policies of persons including persons who have asserted governmental authority in the Crimean region (Occupied Crimea) without the authorization of the Government of Ukraine undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, constitute an

unusual and extraordinary threat to the national security and foreign policy of the United States, and declaring a national emergency to deal with that threat.

Specifically, Executive Order 13660 blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person (including any foreign branch) of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be responsible for or complicit in, or to have engaged in, directly or indirectly, misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine, among other activities. In conjunction with the Department of the Treasury's designation of Chernomorneftegaz, a.k.a. Chornomornaftogaz and NJSC Chornomornaftogaz, under Executive Order 13660, the Department of Commerce is imposing a license requirement for exports, reexports and transfers (in-country) to Chernomorneftegaz, a.k.a. Chornomornaftogaz and NJSC Chornomornaftogaz. Imposition of this license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13660. The entity being added to the Entity List under this rule, Chernomorneftegaz, a.k.a. Chornomornaftogaz and NJSC Chornomornaftogaz, and its assets, were misappropriated. Pursuant to § 744.11 of the EAR, the ERC determined that the conduct of this person raises sufficient concern that prior review of exports, reexports, or transfers (in-country) of items subject to the EAR involving this person, and the possible imposition of license conditions or license denials on shipments to this person, will enhance BIS's ability to protect the foreign policy and national security interests of the United States.

For the one person under two entries added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items

are to be exported, reexported, or transferred (in-country) to this person or in which this person acts as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to this person being added to the Entity List in this rule.

This final rule adds the following one person under two entries to the Entity List:

### **Crimea (Occupied)**

(1) Chernomorneftegaz, a.k.a., the following two aliases:

-Chornomornaftogaz, *and*

-NJSC Chornomornaftogaz.

Kirova / per. Sovnarkomovskaya, 52/1, Simferopol, Crimea, 95000, Ukraine.

(See Ukraine)

### **Ukraine**

(1) Chernomorneftegaz, a.k.a., the following two aliases:

-Chornomornaftogaz, *and*

-NJSC Chornomornaftogaz.

Kirova / per. Sovnarkomovskaya, 52/1, Simferopol, Crimea, 95000, Ukraine.

(See also Crimea (Occupied)).

*Savings Clause*

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

### **Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov), or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a



proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity and would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

#### **List of Subject in 15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

#### **PART 744—[AMENDED]**

1. The authority citation for 15 CFR part 744 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O.

13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013); Notice of January 21, 2014, 79 FR 3721 (January 22, 2014).

2. Supplement No. 4 to part 744 is amended:

- a. By adding, in alphabetical order, an entry for Crimea (Occupied); and
- b. By adding under Ukraine, in alphabetical order, one Ukrainian entity.

The addition reads as follows:

#### Supplement No. 4 to Part 744 - Entity List

| Country                  | Entity   | License requirement  | License review policy  | Federal Register citation  |
|--------------------------|--|--|------------------------|--|
| *****                    |  |  |                        |  |
| <b>CRIMEA (OCCUPIED)</b> | <u>Chernomorneftegaz</u> ,<br>a.k.a., the following two aliases:<br>-Chornomornaftogaz,<br><u>and</u><br>-NJSC<br>Chornomornaftogaz.<br><br>Kirova / per.<br>Sovnarkomovskaya,<br>52/1, Simferopol,<br>Crimea, 95000,<br>Ukraine.<br><br>(See Ukraine) | For all items subject to the EAR.<br>(See §744.11 of the EAR). | Presumption of denial. | 79 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]. |
| *****                    |  |  |                        |  |
| <b>UKRAINE</b>           | <u>Chernomorneftegaz</u> ,<br>a.k.a., the following  | For all items subject to the                                   | Presumption of denial. | 79 FR [INSERT FR PAGE NUMBER   |

|       |  |                                      |  |  |
|-------|--|--------------------------------------|--|--|
|       | two aliases:<br>-Chornomornaftogaz,<br><u>and</u><br>-NJSC<br>Chornomornaftogaz.<br><br>Kirova / per.<br>Sovnarkomovskaya,<br>52/1, Simferopol,<br>Crimea, 95000,<br>Ukraine.<br><br>(See also Crimea<br>(Occupied)).<br><br>***** | EAR.<br>(See §744.11 of<br>the EAR). |  | AND DATE OF<br>PUBLICATION IN<br>THE FEDERAL<br>REGISTER]. |
| ***** |  |                                      |  |  |

Dated: April 11, 2014.

Eric L. Hirschhorn,  
Under Secretary of Commerce for Industry and Security (BIS).

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